**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CENTRAL EXCISE APPEAL NO.141 OF 2006**

The Commissioner of Service Tax ..Appellant.

V/s.

Cadbury India Ltd. ..Respondent.

Mr.P.S.Jet.ly with Parag Vyas for appellant.

Mr.E.P.Bharucha, senior counsel with M.R.Baxi and K.T. Tijoriwala and Tushar Tijoriwala i/b. Tijoriwala & Co. for respondent.

**CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.**

**DATED : 28TH FEBRUARY, 2007.**

**P.C. :-**

Heard learned counsel for the appellant and the respondent. We have perused the order in original as well as order passed by the Commissioner (Appeals) and the order of the CESTAT dated 18TH August, 2005.

2. The main contention of the learned counsel for the appellant is that CESTAT has not considered the provisions of section 68 of Chapter V of the Finance Act, 1994 as amended read with Rule 6 of the Service Tax Rules, 1994. The learned counsel for the appellant pointed out that the above provisions were considered in the order in original as well as in the order of the

the Commissioner (Appeals). However, the same has not been considered by CESTAT in the aforesaid order. The learned senior counsel appearing for the respondents pointed out that the aforesaid issue was not in the show cause notice.

3. Since the CESTAT has not considered the aforesaid provisions at all in its order, we do hereby quash and set aside the Judgment and order of the CESTAT dated 18th August, 2005 and remand back the matter to CESTAT to consider the entire case afresh, including the contention raised by the learned senior counsel for the respondents.

4. Appeal stands disposed of accordingly.

**(DR.S.RADHAKRISHNAN, J.)**

**(J.P. DEVADHAR, J.)**